

AGENDA

KANSAS LOTTERY GAMING FACILITY REVIEW BOARD

10:30 a.m., Thursday, April 10, 2008

Via telephone conference: 1-877-278-8686 (participant PIN 813463)

- A. CALL TO ORDER
- B. APPROVAL OF THE AGENDA
- C. BOARD ITEMS

1. Discussion, consideration and approval of a Review Board meeting schedule

Staff Presentation: Stephen Martino, Executive Director
Attached: Staff memorandum and proposed schedules

2. Discussion, consideration and approval of a Review Board evaluation matrix

Staff Presentation: Jay Hall, Review Board Liaison
Attached: Staff memorandum and proposed matrix

3. Discussion, consideration and possible action on a potential conflict of interest involving a Review Board consultant

Staff Presentation: Stephen Martino, Executive Director
Attached: Staff memorandum

4. Discussion and update on *Flunder et. al. v. Kansas Lottery, et. al.*

Staff Presentation: Patrick Martin, Assistant Attorney General
Attached: Staff memorandum and petition

5. Discussion of a Review Board Budget

Staff Presentation: Stephen Martino, Executive Director
Attached: Staff memorandum

- D. PUBLIC COMMENTS
- E. STAFF REPORTS

- 1. Executive Director
- 2. Chief Gaming Officer
- 3. Assistant Attorney General

- F. OTHER MOTIONS
- G. ADJOURNMENT

Kansas Lottery Gaming Facility Review Board

STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 10, 2008

AGENDA ITEM: Discussion, consideration and possible action on adopting a schedule for Review Board meetings

PRESENTER: Stephen Martino, Executive Director

ISSUE SUMMARY: At its March 21 meeting, the Lottery Gaming Facility Review Board was presented a proposed schedule for future meetings. At that meeting, the board instructed staff to examine whether the schedule presented could be refined. Two alternative schedules have been prepared for the board's consideration.

Consideration of proposals from each gaming zone is broken into a four-meeting effort: one in the gaming zone itself, two in Topeka and one by conference call. It is organized accordingly:

Meeting 1: In-zone

- Management proposal presentations
- Management experts' presentations
- Kansas Lottery Commission comments
- Public comments

Meeting 2: Topeka

- Review Board experts' presentation

Meeting 3: Conference call

- Follow-up questions to managers, managers' experts, board experts, staff

Meeting 4: Topeka

- Follow-up reports, if any, from managers and their experts, board experts, staff
- Background and security fitness reports
- Vote

This schedule was built making two assumptions: that the Lottery will not deliver contracts from any gaming zone until their extended deadlines to do so and that the Review Board will seek its statutorily allowed 60-day extensions for each zone. At this time, it is difficult to predict with precision how much time Review Board consultants will need to complete their work, but for planning purposes it is best to assume that all time allowed under the statute will be needed.

BOARD ACTION REQUIRED/REQUESTED: Adopt a Review Board meeting schedule.

Proposed Review Board meeting schedule No. 1:

Topeka meeting to discuss consultant reports for gaming zone market potential studies:
May 16 (date based on consultant availability)

Southeast gaming zone (Cherokee County):

Meeting 1: **June 30**
Meeting 2: **July 10 and 11**
Meeting 3: **July 29**
Meeting 4: **August 21 and 22**

South Central gaming zone (Sumner County):

Meeting 1: **July 1 and 2**
Meeting 2: **July 10 and 11**
Meeting 3: **July 29**
Meeting 4: **August 21 and 22**

Southwest gaming zone (Ford County):

Meeting 1: **July 23**
Meeting 2: **August 14 and 15**
Meeting 3: **August 21 and 22 (in-person in Topeka)**
Meeting 4: **September 4 and 5**

Northeast gaming zone (Wyandotte County):

Meeting 1: **July 30 and 31**
Meeting 2: **August 14 and 15**
Meeting 3: **August 21 and 22**
Meeting 4: **September 4 and 5**

Meeting 1: In-zone

- Management proposal presentations
- Management experts' presentations
- Kansas Lottery Commission comments
- Public comments

Meeting 2: Topeka

- Review Board experts' presentation

Meeting 3: Conference call

- Follow-up questions to managers, managers' experts, board experts, staff

Meeting 4: Topeka

- Follow-up reports, if any, from managers and their experts, board experts, staff
- Background and security fitness reports
- Vote

Proposed Review Board meeting schedule No. 2:

Topeka meeting to discuss consultant reports for gaming zone market potential studies:
May 16 (date based on consultant availability)

Southeast gaming zone (Cherokee County):

- Meeting 1: **July 7**
- Meeting 2: **July 10 and 11**
- Meeting 3: **August 5 (by phone)**
- Meeting 4: **August 13, 14 and 15**

South Central gaming zone (Sumner County):

- Meeting 1: **July 8 and 9**
- Meeting 2: **July 10 and 11**
- Meeting 3: **August 5 (by phone)**
- Meeting 4: **August 13, 14 and 15**

Southwest gaming zone (Ford County):

- Meeting 1: **July 22**
- Meeting 2: **August 13, 14 and 15**
- Meeting 3: **August 21 (by phone)**
- Meeting 4: **September 4 and 5**

Northeast gaming zone (Wyandotte County):

- Meeting 1: **July 24 and 25**
- Meeting 2: **August 13, 14 and 15**
- Meeting 3: **August 21 (by phone)**
- Meeting 4: **September 4 and 5**

Meeting 1: In-zone

- Management proposal presentations
- Management experts' presentations
- Kansas Lottery Commission comments
- Public comments

Meeting 2: Topeka

- Review Board experts' presentation

Meeting 3: Conference call

- Follow-up questions to managers, managers' experts, board experts, staff

Meeting 4: Topeka

- Follow-up reports, if any, from managers and their experts, board experts, staff
- Background and security fitness reports
- Vote

Proposed Review Board meeting schedule No. 3:

Topeka meeting to discuss consultant reports for gaming zone market potential studies:
May 16 (date based on consultant availability)

Southeast gaming zone (Cherokee County):

Meeting 1: **July 9**
Meeting 2: **July 23 and 24**
Meeting 3: **August 5 (by phone)**
Meeting 4: **August 21 and 22**

South Central gaming zone (Sumner County):

Meeting 1: **July 10 and 11**
Meeting 2: **July 23 and 24**
Meeting 3: **August 5 (by phone)**
Meeting 4: **August 21 and 22**

Southwest gaming zone (Ford County):

Meeting 1: **July 31**
Meeting 2: **September 2 and 3**
Meeting 3: **September 9**
Meeting 4: **September 18 and 19**

Northeast gaming zone (Wyandotte County):

Meeting 1: **August 13, 14 and 15**
Meeting 2: **September 2 and 3**
Meeting 3: **September 9 (by phone)**
Meeting 4: **September 18 and 19**

Meeting 1: In-zone

- Management proposal presentations
- Management experts' presentations
- Kansas Lottery Commission comments
- Public comments

Meeting 2: Topeka

- Review Board experts' presentation

Meeting 3: Conference call

- Follow-up questions to managers, managers' experts, board experts, staff

Meeting 4: Topeka

- Follow-up reports, if any, from managers and their experts, board experts, staff
- Background and security fitness reports
- Vote

Kansas Lottery Gaming Facility Review Board

STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 10, 2008

AGENDA ITEM: Discussion, consideration and approval of a Review Board evaluation matrix

PRESENTER: Jay Hall, Review Board Liaison

ISSUE SUMMARY: During the Feb. 20, 2008, meeting the Review Board requested that an evaluation matrix be developed that could be used by the Review Board and its consultants in evaluating casino manager applications in all gaming zones.

At the March 21, 2008, meeting, the board was presented with a draft of an evaluation matrix for review and discussion. At that time, the board instructed staff to review the draft matrix and submit a final version for board approval.

Staff and board consultants have reviewed the evaluation matrix with the feedback of the board in mind and are presenting this final version approval.

BOARD ACTION REQUIRED/REQUESTED: Approve the proposed evaluation matrix and authorize the executive director to contact casino manager applicants to fill out an approved Lottery Gaming Facility Review Board evaluation matrix.

[illegible]

Company's Name		2009	2010	2011	2012	2013	2014	2015
Please submit 5-year projections, starting from the date of opening								
PROJECTED DATE OF OPENING:	Unit of Measure DD/MM/YYYY							
TOTAL spending by non gaming visitors (residents)	\$							
Total Spending by Residents								
Gaming	\$							
Non Gaming	\$							
TOTAL SPENDING BY RESIDENTS AT LOTTERY GAMING FACILITY	\$							
SOURCES OF EXPENDITURES AT LOTTERY GAMING FACILITY: For the following questions, provide your best estimates, based on your economic models								
Percent of Spend that would have occurred within the region*	%							
Percent of Spend that would have taken place outside the region**	%							
Percent of Spend that comes from new income generated in the region***	%							

Company's Name								
Please submit 5-year projections, starting from the date of opening								
PROJECTED DATE OF OPENING:								
Unit of Measure								
DD/MM/YYYY								
		2009	2010	2011	2012	2013	2014	2015
	No.							
	No.							
Tourist Gaming Visitors								
	Accommodation							
	Food & Beverage							
	Retail							
	Gaming							
	Tickets to events, concerts, shows							
	Other spending							
	TOTAL spending by gaming visitors (tourists)							
Tourist Non-Gaming Visitors								
	Accommodation							
	Food & Beverage							
	Retail							
	Gaming							
	Tickets to events, concerts, shows							
	Other spending							
	TOTAL spending by non-gaming visitors (tourists)							
TOTAL SPENDING BY TOURISTS AT LOTTERY GAMING FACILITY								

[illegible]

[illegible]

[illegible]

[illegible]

Company's Name

Consolidated Pro-Forma Income and Expenditure Statement for the LGF

Amounts in thousands of dollars

Please submit 5-year projections, starting from the date of opening

PROJECTED DATE OF OPENING:

Unit of Measure DD/MM/YYYY

200

2010

2011

2012

2013

2014

2015

REVENUE (from below)

Casino

Hotel

Food

Beverage

Convention

Entertainment

Retaxi

Other

Gross Revenues

less: cost of sales

Gross Margin

DEPARTMENTAL EXPENSES (from below)

DEPARTMENTAL INCOME

GENERAL AND ADMINISTRATIVE

EXPENDITURE

Advertising and Promotion

Advertising and promotion expense

Complementary expense (not reported in departments)

Depreciation - Buildings

Depreciation and Amortization

Energy Expense (electricity, gas, etc.)

	Equipment rental or lease
1. Description of equipment:	
2. Date acquired:	
3. Estimated useful life:	
4. Original cost:	
5. Current value:	
6. Depreciation method:	
7. Annual depreciation expense:	
8. Total depreciation expense:	
9. Net book value:	
10. Remarks:	

Interest expense

Payroll taxes

Payroll - Employee benefits

Payroll - office	
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Rent of Premises

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

CONSTRUCTION PHASE INFORMATION DURING OPERATIONS PHASE OF LOTTERY GAMING FACILITY											
Company's Name	Unit of Measure										
Please submit 5-year projections, starting from the date of opening.											
PROJECTED DATE OF OPENING:	DD/MM/YYYY	Y									
			2008	2009	2010						
Development investment											
Fixed asset investment											
Buildings											
Land and land improvements											
Public sector infrastructure											
Rolling stock											
Furniture, Fixtures and Equipment											
Floor and Wall Treatments											
Gaming equipment											
Others											
TOTAL INVESTMENT											
Source of Funds for Investment											
Percent each year from:											
Construction Loan											
Debt											
Working Capital from Parent Company											
Sale of Equity											
Other (please explain)											
At the following figures on a Quarterly basis			2008-IV	2009-I	2009-II	2009-III	2009-IV	2010-I	2010-II	2010-III	2010-IV

Development Employment Data									
Construction Employment									
Average Wage per employee									
Total construction payroll									
Average Benefits per employee									
Other expenses per employee									
Cost of materials from region									
Cost of materials from outside of region									
Other Development Expenses									

[illegible]

[illegible]

[illegible]

PLEASE NOTE WHAT YOU CONSIDER TO BE THE TEN MOST IMPORTANT FEATURES OF YOUR PROPOSAL.	
What factors of your proposal are most distinctive in making it more attractive to Kansas and its residents than a "generic" gaming facility that could be developed within this zone?	
Please provide descriptions of ten (or fewer) features in 250 words or less for each.	
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Economic and Fiscal Impacts						
Total economic impact-construction						\$
Total economic impact-operating						\$ xxx
Total incremental public sector revenue-construction						\$
Total incremental public sector costs-construction						\$
Total incremental public sector revenue-operating						\$ xxx
Total incremental public sector costs-operating						\$ xxx
Three Most Important Features						
1						
2						
3						

Kansas Lottery Gaming Facility Review Board

STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 10, 2008

AGENDA ITEM: Discussion, consideration and possible action on potential conflict of interest involving Meridian Business Advisors, a consultant for the Lottery Gaming Facility Review Board, and RED Development, a partner in a proposal to be a lottery gaming facility manager.

PRESENTER: Stephen Martino, Executive Director

ISSUE SUMMARY: Following the Review Board's most recent meeting, Candace Evart, president of Meridian Business Advisors (MBA) in Reno, Nevada, and a consultant for the Review Board, contacted the executive director to inform him of a potential conflict of interest with a party in a lottery gaming facility proposal. RED Development (RED) is a partner in the Legends Sun proposal in the Northeast gaming zone. Prior to the Review Board's previous meeting on March 21, 2008, MBA was unaware that RED was involved in the Legends proposal. Only after a conversation with Professor William Eadington on or about March 21 did MBA realize RED's involvement. Ms. Evart notified the executive director immediately with the following e-mail:

Stephen, regarding the RED/Mohegan Tribe gaming proposal, I didn't connect this with RED Development, which is building "The Legends" in Sparks, Nevada. It was only the name "Legends" that put it all together for me. I apologize for not listing our association with RED Development in our proposal to you. Below is a summary of our involvement in the Sparks project.

We were retained by the City of Sparks to conduct an analysis on The Legends development; our fee was paid by the City of Sparks and RED Development reimbursed the City in the same amount. We sent our proposal to Sparks on March 10, 2004, and the City signed the contract in April 2004.

Our scope of work was as follows: Estimate the sales tax revenue generated by the proposed development and determine the distribution of that revenue to various governmental entities, including the StarBonds District; conduct a fiscal impact analysis estimating the public sector revenue generated by the development and the government costs to service the development (K-12, police, fire, etc.); and conduct an economic impact analysis to estimate the impact on the region (new jobs, increased purchases of good and services). The analyses were based on a development with retail, entertainment, baseball park, RV center and a

casino/hotel. At the time the analysis was completed, it was unknown to us who would own/operate the hotel. It is now public knowledge that the operator will be Olympia Gaming.

We issued our final report in August, 2006. Since then, RED has asked up to update our property tax projections given revisions to the original plan and update our economic impact projections given the revisions. These updates were started in February, 2008 and completed this month. Total billings from April 2004 to now are approximately \$65,000.

After receiving this information, the executive director sought to clarify the involvement MBA and RED. A number of questions (in italics) were submitted to Ms. Ewart and MBA. Their answers follow:

A. Am I correct in understanding that the initial project, which appears to span from April 2004 to August 2006, was done under contract between your firm, MBA, and the City of Sparks, Nevada? Did the City of Sparks pay the bill to your firm?

1. March 2004 contract with City of Sparks. Report submitted July 2004.

Scope of Work: Fiscal and economic impact analysis on retail, entertainment, commercial development. No casino/hotel land use identified.

Fee: \$24,200

First Amendment to Contract: September 2005, \$9,000

Scope: Add additional parcels and revise fiscal and economic impact analysis; no casino/hotel land use identified.

Second Amendment to Contract: March 2006, \$18,000

Scope: Additional research, public meetings; no casino/hotel land use identified.

August 2006 fiscal impact analysis report was submitted with two scenarios, one with and one without a casino/hotel. RED Development estimated the casino at approximately 280,000 square feet and hotel at 890,000 square feet. No developer/operator was identified.

2. In January 2008, RED Development contacted MBA to update the property tax revenue estimate and economic impact analysis given changes to the total square footage and land uses of the development. A hotel casino was included in the Legends development with a construction cost of approximately \$600 million as estimated by RED Development. No owner/operator was identified, although it was public knowledge as

reported in the Reno Gazette Journal that it would be Olympia Gaming. The time for this work was billed directly to RED.

3. March 2008 RED Development has asked MBA to update the fiscal impact analysis given changes to the total square footage of the development and land uses. As of 3/28/08, we have not started this work and have a meeting next week with the City of Sparks and RED Development to determine if we will pursue it.

B. It appears that your initial fees were reimbursed by RED Development to the City of Sparks, correct?

Yes, from 2004 through 2006 MBA invoiced the City for all work. The City then was reimbursed by RED. The 2008 work (see 2 above) was billed directly to RED.

C. Am I correct in understanding that the initial report issued by MBA contained analysis of a projected casino/hotel but that there was no operator attached to that aspect of the project during this phase of work?

The initial report in 2004 did not include a hotel/casino (see 1 above.) The August 2006 fiscal impact analysis report was submitted with two scenarios, one with and one without a casino/hotel. RED Development estimated the casino at approximately 280,000 square feet and hotel at 890,000 square feet. No developer/operator was identified (see 1 above). The revision work done in January, February and March 2008 on the property tax revenue and economic impact analysis did identify a hotel/casino land use but did not identify an owner/operator (See 2 and 3 above) although it is common knowledge that Olympia Gaming would be involved as reported in the Reno Gazette Journal.

D. Who requested the supplemental report be prepared, City of Sparks or RED Development? With whom is the contract for the supplement report, Sparks or RED? Who is paying the bill for the supplemental work?

RED Development requested revisions to the 2006 report in January of 2008 due to new estimates of project square footage and inclusion of a hotel/casino. Our scope of work was to update the property tax revenue projections and the economic impact analysis given these revisions. There is no formal contract with RED for this work, only a "gentleman's agreement" or a "handshake". RED is paying for the supplemental work, directly to MBA.

E. It appears that the supplemental report has been completed. Is that correct? Has MBA billed for these services yet? Has it received payment?

MBA has completed the supplemental report comprised of revisions to the economic impact analysis and to the property tax revenue estimate. MBA billed RED \$1,618.75 on January 31, 2008; \$5,990 on February 29; and an estimated \$3,000 to be billed in March 2008. We have received payment for the January billing of \$1,618.75.

F. Did any aspect of the supplemental report concern the hotel/casino project for which now the identified operator is Olympia Gaming, a partner of RED in the Kansas project? If so, what in the report addressed the casino/hotel project? If so, did the identity of the operator impact or play any role in arriving at any projections or conclusions?

The supplemental report included a land use designation for a hotel/casino with a construction cost of close to \$600 million, an estimate given to us by RED Development. No operator/owner was identified in the report, although it was common knowledge that Olympia would be the operator as reported in the Reno Gazette Journal. The supplemental report estimated the property tax revenue generated by the casino at its estimated construction cost of \$600 million and its regional economic impact in terms of job creation and the purchase of goods and services. The identity of the operator did not play any role in arriving at the projections.

Staff is satisfied that MBA alerted the Lottery Gaming Facility Review Board immediately upon learning of RED's involvement in a Kansas casino proposal. At this time, MBA has no active projects for RED, although there are accounts receivable for the work done in January 2008.

BOARD ACTION REQUIRED/REQUESTED: There is no specific action requested of the board. However, the board may determine that some action is appropriate given this information.

Kansas Lottery Gaming Facility Review Board

STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 10, 2008

AGENDA ITEM: Discussion and update on *Flunder et. al. v. Kansas Lottery, et. al.*

PRESENTER: Patrick Martin, Assistant Attorney General

ISSUE SUMMARY: On March 25, 2008, four Wyandotte County residents filed suit in the Shawnee County District Court against the Kansas Lottery, Kansas Lottery Commission, Kansas Racing and Gaming Commission and the Lottery Gaming Facility Review Board. No individuals were named in this lawsuit, and no monetary damages were requested.

The lawsuit alleges that three proposals in the northeast zone are benefiting from Tax Increment Financing (TIF) or Sales Tax Anticipated Revenue (STAR) bonds, in violation of K.S.A. 74-8753(a). It also alleges that two of those proposals benefit from property that was acquired through eminent domain in violation of K.S.A. 74-8734(i). The plaintiffs in this suit have requested a permanent injunction in this action to prevent the state from contracting with any of these applicants.

Staff is currently investigating all available options regarding this lawsuit and will update the board further during a future executive session.

BOARD ACTION REQUESTED/REQUIRED: None.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

FILED BY CLERK
K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

2008 MAR 25 AM 9 08

Mary Ann Flunder;
Thomas Gordon;
Domingo Soto; and
Calvin Vick,

Plaintiffs,

vs.

Case No. 08 C 442

The Kansas Lottery;

The Kansas Lottery Commission;

Lottery Gaming Facility Review Board;
and,

The Kansas Racing and Gaming
Commission,

Defendants.

FIRST AMENDED PETITION

COME NOW Plaintiffs Mary Ann Flunder, Thomas Gordon, Domingo Soto, and Calvin Vick, by and through their legal counsel, and state for their Petition as follows:

PARTIES

1. Plaintiff Mary Ann Flunder is a taxpayer residing at 1236 Grandview Blvd., Kansas City, Kansas.
2. Plaintiff Thomas Gordon is a taxpayer residing at 2521 N. 7th St., Kansas City, Kansas.
3. Plaintiff Domingo Soto is a taxpayer residing at 1713 Metropolitan, Kansas City, Kansas.
4. Plaintiff Calvin Vick is a taxpayer residing at 304 Walker Ave., Kansas City, Kansas.

5. Defendant Kansas Lottery is an agency of the State of Kansas with its headquarters located at 128 N. Kansas Avenue, Topeka, Kansas 66603.

6. Defendant Kansas Lottery Commission is a governmental entity of the State of Kansas with its headquarters located at 128 N. Kansas Avenue, Topeka, Kansas 66603.

7. Defendant Lottery Gaming Facility Review Board is a governmental entity of the State of Kansas with its headquarters located at 700 S.W. Harrison, Suite 420, Topeka, KS 66603.

8. Defendant Kansas Racing and Gaming Commission is a governmental entity of the State of Kansas with its headquarters located at 700 S.W. Harrison, Suite 420, Topeka, KS 66603.

9. All Defendants conduct their official duties pertaining to the Kansas Lottery, Kansas Lottery Commission, Lottery Gaming Facility Review Board, and Kansas Racing and Gaming Commission in Shawnee County, Kansas.

10. This Court has jurisdiction over the parties pursuant to Kan. Stat. Ann. § 60-303 and § 60-304. Venue is proper pursuant to Kan. Stat. Ann. § 60-602 and § 60-603. Jurisdiction and also proper pursuant to the Kansas Expanded Lottery Act § 2(c). *See* L. 2007, Ch. 110 (hereinafter cited as "the Kansas Expanded Lottery Act").

11. All defendants are hereinafter referred to collectively as "Defendants" unless otherwise particularly stated.

12. Defendants may be served by serving the Attorney General of the State of Kansas, Stephen Six, Memorial Hall, 2nd Floor, 120 SW 10th Street, Topeka, KS 66612, pursuant to K.S.A. § 60-304(d)(5).

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

DEFENDANTS' ROLES UNDER THE KANSAS EXPANDED LOTTERY ACT

13. The Kansas Lottery is authorized by the Kansas Expanded Lottery Act to operate one lottery gaming facility in the northeast Kansas gaming zone, which is designated as Wyandotte County, Kansas.

14. The Kansas Expanded Lottery Act defines a "lottery gaming facility" as "that portion of a building used for the purposes of operating, managing and maintaining lottery facility games."

15. The Kansas Lottery Commission is authorized by statute to approve and execute management contracts with prospective lottery gaming facility managers to manage, or construct and manage, on behalf of the State of Kansas and subject to the operational control of the Kansas Lottery, a lottery gaming facility in the northeast Kansas gaming zone, which is designated as Wyandotte County, Kansas.

16. The Lottery Gaming Facility Review Board is required by statute to evaluate the management contracts approved and executed by the Kansas Lottery Commission to determine if any is the best possible management contract.

17. The Kansas Racing and Gaming Commission is required by statute to evaluate and approve any management contract deemed to be the best possible management contract by the Lottery Gaming Facility Review Board or disapprove any such contract.

**THE KANSAS EXPANDED LOTTERY ACT'S LIMITS ON
PUBLIC FINANCING OF LOTTERY GAMING ENTERPRISES**

18. Pursuant to the Kansas Expanded Lottery Act, "[n]o revenue bonds, tax increment financing or similar financing shall be used to finance any part of any lottery gaming enterprise."

19. The Kansas Expanded Lottery act defines a "lottery gaming enterprise" as:

[A]n entertainment enterprise which includes a lottery gaming facility authorized

pursuant to the Kansas expanded lottery act and ancillary lottery gaming facility operations that have a coordinated business or marketing strategy.

20. The Kansas Expanded Lottery act defines "ancillary lottery gaming facility operations" as:

additional non-lottery facility game products and services not owned and operated by the state which may be included in the overall development associated with the lottery gaming facility. Such operations may include, but are not limited to, restaurants, hotels, motels, museums or entertainment facilities.

THE KANSAS EXPANDED LOTTERY ACT'S LIMITS ON THE USE OF EMINENT DOMAIN

21. Pursuant to the Kansas Expanded Lottery Act, "[t]he power of eminent domain shall not be used to acquire any interest in real property for use in a lottery gaming enterprise."

THE PROPOSED MANAGEMENT CONTRACTS

22. The Kansas Lottery Commission is currently reviewing several applications submitted by entities wishing to enter into a management contract for the construction and management of a lottery gaming facility in Wyandotte County, Kansas. These applications include proposals for both lottery gaming facilities and certain ancillary lottery gaming facility operations proposed to be constructed by the applicant.

23. Of these applications currently being reviewed by the Kansas Lottery Commission, three create lottery gaming enterprises that are financed by or directly benefit from STAR bonds, TIF funding, eminent domain condemnations, and/or transportation development district bonds.

24. STAR bonds and TIF funding are revenue bonds, tax increment financing or similar financing.

25. The pending applications that involve lottery gaming enterprises that are financed by or directly benefit from STAR bonds, TIF funding, eminent domain condemnations and/or

industrial revenue bonds have been proposed by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment.

PINNACLE ENTERTAINMENT

26. The lottery gaming facility proposed in the application submitted by Pinnacle Entertainment has a coordinated business and marketing strategy with the Schlitterbahn Water Park.

27. The Schlitterbahn Water Park is a development financed in part by STAR bonds.

28. The Schlitterbahn Water Park and the lottery gaming facility proposed by Pinnacle Entertainment will share an interconnected waterway and bridges. Additionally, the sizing of the convention facility proposed in Pinnacle Entertainment's application is correlated to construction of hotel facilities at the Schlitterbahn Water Park.

29. In Pinnacle Entertainment's response to a request for proposal issued by the Unified Government of Wyandotte County, Kansas, Pinnacle states that the Pinnacle plan will integrate with the Schlitterbahn Water Park to create a destination that will cater to business and leisure travelers.

30. Spokespeople for Pinnacle Entertainment testified before the Unified Government of Wyandotte County, Kansas that Pinnacle Entertainment has agreed to construct additional convention space to accommodate hotel rooms in the Schlitterbahn Water Park.

31. Spokespeople for Pinnacle Entertainment also testified before the Unified Government of Wyandotte County, Kansas that the integration of the Pinnacle Entertainment lottery gaming facility with the Schlitterbahn Water Park would create a super-regional destination.

32. Pinnacle Entertainment, through its subsidiary PNK (Kansas), LLC has executed a

Development Agreement with the Unified Government of Wyandotte County, Kansas, dated December 31, 2007, which provides that Pinnacle Entertainment's "project" will consist of a central water feature connecting the gaming facility with the Schlitterbahn Water Park, as well as the expansion of Pinnacle's convention space from 100,000 square feet to 200,000 square feet after Schlitterbahn develops its planned hotel space.

33. The Schlitterbahn Water Park and proposed gaming facility are adjacent to one another, share interconnected walkways and waterways, will capitalize on revenues generated by each other, have agreed to construct their facilities of certain sizes based on the relative size of the other's development and intend to coordinate their developments to create a combined attraction.

34. The Schlitterbahn Water Park is an ancillary lottery gaming facility because it is included within the overall development associated with the lottery gaming facility proposed by Pinnacle Entertainment.

35. Because the Schlitterbahn Water Park is an ancillary gaming facility that shares a coordinated business and marketing strategy with the lottery gaming facility proposed by Pinnacle Entertainment, the Schlitterbahn Water Park and the lottery gaming facility proposed by Pinnacle Entertainment form a lottery gaming enterprise.

36. The lottery gaming enterprise consisting of the lottery gaming facility proposed by Pinnacle Entertainment and the Schlitterbahn Water Park is financed in part by revenue bonds, tax increment financing or similar financing because the Schlitterbahn Water Park is financed by STAR bonds.

LEGENDS SUN

37. The lottery gaming facility proposed in the application submitted by Legends Sun has a coordinated business and marketing strategy with the Legends at Village West entertainment and shopping district.

38. The Legends at Village West entertainment and shopping district directly benefits from the use of STAR bonds and TIF funding to acquire land and to develop and build primary infrastructure at the site.

39. The Legends at Village West entertainment and shopping district is adjacent to the site of the lottery gaming facility proposed by Legends Sun. The Legends at Village West entertainment and shopping district and Legends Sun share common ownership.

40. The use of the common name "Legends" with respect to both the Legends Sun and Legends at Village West is evidence of the coordinated marketing strategy between the Legends Sun lottery gaming facility and the Legends at Village West entertainment and shopping district.

41. In Legends Sun's response to a request for proposal issued by the Unified Government of Wyandotte County, Kansas, Legends Sun states because common ownership interest between the Legends Sun the Legends at Village West, tenants at the Legends Sun ancillary gaming facility operations would be chosen so as not to compete with tenants at the Legends at Village West.

42. Because the Legends at Village West entertainment and shopping district and the lottery gaming facility proposed by Legends Sun are adjacent to one another, because the Legends and Village West entertainment and shopping districts and Legends Sun share common ownership, and because of the deliberate association of the brand name "Legends" between the Legends Sun lottery gaming facility and the Legends at Village West entertainment and shopping district, their business and marketing strategies are inextricably intertwined, both practically and because of fiduciary responsibilities.

43. The application submitted by Legends Sun directly relies upon transportation development district bonds as a funding mechanism.

44. Because of their proximity, their common ownership, and the common use of

the goodwill associated with the brand name "Legends," the Legends Sun and Legends at Village West are part of the overall development associated with a lottery gaming facility.

45. The Legends at Village West entertainment and shopping district is an ancillary lottery gaming facility because it is included within the overall development associated with the lottery gaming facility proposed by Legends Sun.

46. Because the Legends at Village West entertainment and shopping district is an ancillary gaming facility that shares a coordinated business and marketing strategy with the lottery gaming facility proposed by Legends Sun, the Legends at Village West entertainment and shopping district and the lottery gaming facility proposed by Legends Sun form a lottery gaming enterprise.

47. The lottery gaming enterprise consisting of the lottery gaming facility proposed by Legends Sun and the Legends at Village West entertainment and shopping district is financed in part by revenue bonds, tax increment financing or similar financing because the Legends at Village West entertainment and shopping district directly benefits from STAR bonds and TIF funding and because the lottery gaming facility proposed by Legends Sun relies on transportation development district bonds as a funding mechanism.

48. Portions of the real property underlying the lottery gaming enterprise consisting of the lottery gaming facility proposed by Legends Sun and the Legends at Village West entertainment and shopping district were acquired by eminent domain or under the threat of eminent domain, therefore, the power of eminent domain was used to acquire an interest in real property for use in the Legends Sun lottery gaming enterprise.

SPEEDWAY ENTERTAINMENT

49. The lottery gaming facility proposed in the application submitted by Speedway

Entertainment has a coordinated business and marketing strategy with the Kansas Speedway.

50. The Kansas Speedway benefited from the use of STAR bonds and TIF funding to develop and build primary infrastructure at the site, to pay land acquisition costs, and to construct the speedway grandstand.

51. The Kansas Speedway is adjacent to the site of the lottery gaming facility proposed by Speedway Entertainment. The Kansas Speedway and Speedway Entertainment share common ownership.

52. Spokespeople for Speedway Entertainment testified before the Unified Government of Wyandotte County, Kansas that the convention space within the Kansas Speedway would be used in conjunction with the Speedway Entertainment lottery gaming facility.

53. Spokespeople for Speedway Entertainment also testified before the Unified Government of Wyandotte County, Kansas that it is the intent of Speedway Entertainment and the Kansas Speedway to utilize the amenities available at the Kansas Speedway in order to sell meetings and conventions.

54. Because the Kansas Speedway and the lottery gaming facility proposed by Speedway Entertainment are adjacent to one another, because the Kansas Speedway and Speedway Entertainment share common ownership, and because the Kansas Speedway and Speedway Entertainment intend to jointly market the amenities of each development, their business and marketing strategies are inextricably intertwined.

55. Because of their proximity, the use of the speedway as an integral part of the development, and their common ownership, the lottery gaming facility and Kansas Speedway are part of the same overall development.

56. The Kansas Speedway is an ancillary lottery gaming facility because it is included within the overall development associated with the lottery gaming facility proposed by

Speedway Entertainment.

57. Because the Kansas Speedway is an ancillary gaming facility that shares a coordinated business and marketing strategy with the lottery gaming facility proposed by Speedway Entertainment, the Kansas Speedway and the lottery gaming facility proposed by Speedway Entertainment form a lottery gaming enterprise.

58. The lottery gaming enterprise consisting of the lottery gaming facility proposed by Speedway Entertainment and the Kansas Speedway is financed in part by revenue bonds, tax increment financing or similar financing because the Kansas Speedway directly benefited from STAR bonds and TIF funding.

59. If approved and executed in a management contract, the lottery gaming enterprises proposed by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment will violate the Kansas Expanded Lottery Act's prohibition that: "No revenue bonds, tax increment financing or similar financing shall be used to finance any part of any lottery gaming enterprise."

60. Portions of the real property underlying the lottery gaming enterprise consisting of the lottery gaming facility proposed by Speedway Entertainment and the Kansas Speedway were acquired by eminent domain or under the threat of eminent domain, therefore, the power of eminent domain was used to acquire an interest in real property for use in the Speedway Entertainment lottery gaming enterprise.

**THE ILLEGAL COLLECTION OF STATE AND LOCAL TAXES
BASED ON STAR BONDS, TIF FUNDING,
AND TRANSPORTATION DEVELOPMENT DISTRICT BONDS**

61. Sales tax revenues are currently being collected or are projected to be collected in Wyandotte County, Kansas to retire the STAR bonds that finance and/or directly benefit the lottery gaming enterprises proposed by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment.

62. Tax revenues within TIF districts from Wyandotte County are currently being used to retire TIF bonds that finance and/or directly benefit the lottery gaming enterprises proposed by Legends Sun and Speedway Entertainment.

63. Tax revenues will be collected in Wyandotte County to retire transportation development district bonds used to finance the lottery gaming enterprise proposed by Legends Sun.

64. Plaintiffs are currently paying sales and/or property tax used to retire the STAR bonds and TIF bonds described in paragraphs 61-62.

65. Plaintiffs will be assessed taxes to retire the transportation development district bonds described in paragraph 63.

66. Should Defendants approve and execute a management contract based on any of the applications submitted by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment, such a management contract would create a lottery gaming enterprise financed in part by revenue bonds, tax increment financing or similar financing.

67. Because the Kansas Expanded Lottery Act prohibits the use of revenue bonds, tax increment financing or similar financing to finance any part of a lottery gaming enterprise, the taxes described in paragraphs 58 through 63 to retire the STAR bonds, provide TIF funding, and retire the transportation development district bonds will become illegal taxes if Defendants approve and execute a management contract based on any of the applications submitted by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment.

68. As a result, Plaintiffs will be assessed and made to pay illegal taxes if Defendants approve and execute any management contract based on the applications submitted by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment.

**THE ILLEGAL USE OF EMINENT DOMAIN TO ACQUIRE AN INTEREST IN REAL PROPERTY
FOR USE IN A LOTTERY GAMING ENTERPRISE**

69. Should Defendants approve and execute a management contract based the applications submitted by Legends Sun and Speedway Entertainment, such a management contract would create a lottery gaming enterprise wherein an interest in real property was acquired through the use of the power of eminent domain.

COUNT I – PERMANENT INJUNCTION

70. Plaintiff realleges and asserts paragraphs 1 through 69 as if fully set forth herein.

71. There is a substantial likelihood that Defendants will approve and execute a management contract based on one of the applications submitted by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment.

72. Such a management contract will be in violation of the Kansas Expanded Lottery Act's prohibition on the use of revenue bonds, tax increment financing or similar financing to finance any part of a lottery gaming enterprise.

73. A management contract based on the applications submitted by Legends Sun or Speedway Entertainment would be in violation of the Kansas Expanded Lottery Act's prohibition on the use of the power of eminent domain to acquire any interest in real property for use in a lottery gaming enterprise.

74. Plaintiff will be made to pay illegal tax as a result of Defendants' approving and executing a management contract based on one of the applications submitted by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment.

75. Plaintiff is entitled to a permanent injunction pursuant to Kan. Stat. Ann. § 60-907 against Defendants to enjoin action that would result in the collection of an illegal tax.

WHEREFORE, Plaintiff requests that this Court enter a permanent injunction enjoining Defendants from approving and/or executing any management contract based on the applications

submitted by Pinnacle Entertainment, Legends Sun, and Speedway Entertainment. Plaintiff further requests any other and additional relief as the nature of the case may require and as this Court deems just and equitable.

Respectfully Submitted,



Caleb Stegall #19584

THE STEGALL LAW FIRM

504 Plaza Drive

Perry, KS 66073

(785) 597-5777

(785) 597-5766 (fax)

cs@calebstegall.com

Attorney for Plaintiffs

Kansas Lottery Gaming Facility Review Board

STAFF AGENDA MEMORANDUM

DATE OF MEETING: April 10, 2008

AGENDA ITEM: Discussion regarding the Review Board's budget

PRESENTER: Stephen Martino, Executive Director

ISSUE SUMMARY: The Kansas Racing and Gaming Commission is charged with providing the Lottery Gaming Facility Review Board with support staff and maintaining the Review Board budget.

The initial Review Board budget for consultants was premised on consultants attending only those meetings at which they were giving presentations. However, the board has indicated an interest in having all consultants attend all meetings of the board. The increased presence of consultants will raise not only travel costs but will increase overall consulting charges for time spent attending additional meetings.

This discussion is intended to clarify the desire of the board and allow staff to develop a budget that reflects what the board wants done along with giving prospective lottery gaming facility managers adequate notice of the charges they will incur for Review Board consideration.

BOARD ACTION REQUESTED/REQUIRED: None